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2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

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5 BODO PARADY, as Special Administrator of the  
Estate of SABINA PARADI AND BODO PARADY and  
6 MARY MOORE, Individually,

7 Plaintiffs,

07 CIV 3640 (JCF)

8 -against-

9 MICHAEL R. PHILLIPS,

10 Defendant.

11 ----- x

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13

14 DEPOSITION of a Nonparty Witness,  
15 SHARLENE AQUILER, taken pursuant to Subpoena, held  
16 at the offices of Barrister Reporting Service,  
17 Inc., 120 Broadway, New York, New York, on  
18 December 20, 2008, at 11:20 a.m., before a Notary  
19 Public of the State of New York.

20

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22 \*\*\*\*\*

23 BARRISTER REPORTING SERVICE, INC.

120 Broadway

24 New York, N.Y. 10271

212-732-8066

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2 APPPEARANCES:

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BY: MICHAEL V. KAPLEN, ESQ.

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9

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Attorneys for Defendant

10

591 Summit Avenue

Jersey City, New Jersey 07306-2703

11

BY: JAMES D. BUTLER, ESQ.

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13

14 ALSO PRESENT:

15

SHALOM STAVSKY, Student Reporter

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2                   S T I P U L A T I O N S

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4                 IT IS HEREBY STIPULATED AND AGREED by and  
5         between the attorneys for the respective parties  
6         herein, that filing, sealing and certification,  
7         and the same are, hereby waived.

8

9                 IT IS FURTHER STIPULATED AND AGREED that  
10        all objections except as to the form of the  
11        question, shall be reserved to the time of the  
12        trial.

13

14                 IT IS FURTHER STIPULATED AND AGREED that  
15        the within deposition may be signed and sworn to  
16        by an officer authorized to administer an oath,  
17        with the same force and effect as if signed and  
18        sworn to before the Court.

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25

1 Aquiler

2 SHARLENE AOUILER

3 having been first duly sworn before a Notary  
4 Public of the State of New York, was examined  
5 and testified as follows:

## 6 EXAMINATION BY

7 MR. BUTLER:

8 Q What is your name?

9 A Sharlene Aquiler

10 Q What is your address?

11 A 733 St. Nicholas Avenue, New York, New  
12 York 10031.

13 Q My name is James Butler. I represent  
14 the defendant in this lawsuit instituted by  
15 the Parady family arising out of an incident  
16 on February 25, 2007 at the corner of West  
17 37th Street and Ninth Avenue.

18 You have some familiarity with that,  
19 do you not?

20 A Yes.

21 Q You are appearing by reason of a  
22 subpoena received by my office?

23 A Yes

24 Q Prior to being served with that  
25 subpoena, had you spoken with anybody in my

Aquiler

2 office?

3 A No.

4 Q What is your phone number?

5 A 917-583-2424.

6 Q Is that the same number that you gave  
7 the police?

8 A Yes.

9 Q That has an answering service?

10 A Yes.

11 Q Did you, on that answering service,  
12 get several calls from my office from an  
13 investigator from my office asking to speak  
14 with you?

15 A No.

16 Q You never heard a message on your  
17 phone from my office asking you to call?

18 A No.

19 Q You never did call my office, did you?

20 A No.

21 Q When did you first speak with anyone  
22 from Mr. Kaplen's office?

23 A About a month ago.

24 Q What happened at that time?

25 A He mentioned that he was representing

1 Aquiler

## 2 the Parady family.

3 Q By phone?

4 A Yes, by phone and we should speak  
5 about the incident and a few weeks later, I  
6 found out about this deposition.

7 Q In between the time of that phone call  
8 and a few weeks later when you found out  
9 about this deposition, did you speak with Mr.  
10 Kaplen or anybody from his office?

11 A No.

12 Q You didn't have any substantive talk?

13 A No.

14 Q On that first phone call, did you have  
15 a talk about what happened or what you saw or  
16 what you did not see?

17 A Briefly.

18 Q What did Mr. Kaplen ask you and what  
19 did you say?

20 A He asked me to recount every event and  
21 I recounted what I remembered

22 Q Did he ask you any specific questions  
23 about the weather?

24 A I believe so

25 Q What did you tell him?

1 Aquiler

2 A It was a wet night, precipitation. It  
3 was slushy and sleet.

4 Q What did you tell him about the  
5 precipitation that was falling?

6 A It was falling. It was in my face.

7 Q That was sleet?

8 A Yes.

9 Q Did he ask you anything about  
10 location?

11 A Not necessarily.

12 Q Where you were, about where the  
13 accident was?

14 A In terms of crosswalk and a curb, yes.

15 Q He asked about a specific crosswalk  
16 and a curb?

17 A Yes.

18 Q What did you tell him?

19 A I recounted we were walking ahead of  
20 Sabina and her friend. At a green light,  
21 right before reaching the curb, we noticed a  
22 truck trying to make it for that turn. We  
23 heard the screech, the thud and we turned  
24 around and noticed Sabina lying on her back  
25 on the ground next to the front left wheel,

1 Aquiler

2 tire, which Michael Phillips got out of his  
3 car and realized what happened.

4 Q She was lying on her back where you  
5 said, near something?

6 A The tire, the front left tire.

7 Q Did you tell him where her feet were  
8 with relation to the tire, and/or her head?

9 A Her torso was closer to the tire and  
10 her feet towards I guess the front door, the  
11 bottom of the door.

12 Q Where was her head facing?

13 A It was facing up when I saw her.

14 Q In terms of direction?

15 A She was on her back, it was straight  
16 up.

17 Q What I meant in terms of direction --

18 A of the intersection?

19 Q The area, yes?

20 A Diagonal. If you're looking at the  
21 intersection, she was at a diagonal.

22 Q When you say diagonal, can you tell us  
23 in which direction that was?

24 A Her feet were facing the northeast

25 corner and her head was facing the southwest

Aquiñer

2 corner?

3 Q You were with your friend, is that  
4 right?

## 5 A My friend Maria.

6 Q Is that Maria Eberline?

7 A Yes.

8 Q And you had been friends for some  
9 time?

10 A Yes.

11 Q She was staying with you that weekend?

12 A Yes.

13 Q And you were a teacher?

14 A Yes.

15 Q Where did you teach?

16 A PS-368, West Harlem, third grade

17 Q Where was that?

18 A On West 133rd between Broadway and  
19 Amsterdam.

20 Q You live on St. Nicholas, up in that  
21 area?

22 A Yes, 147th and St. Nicholas

23 Q How long have you lived in New York?

24 A It will be four years in August

25 0 Where did you live before that?

1 Aquiler

2 A I lived in Berkeley, California.

3 Q Did you go to school there?

4 A I was teaching in San Francisco, but I  
5 had gone to school there prior.

6 Q At Berkeley?

7 A Yes.

8 Q Did Maria go there also?

9 A She went to UCLA.

10 Q Are you in any way connected with the  
11 Arts Theater, Theater of the Arts?

12 A As a hobby, yes, not as a profession.

13 Q On that particular night, you and  
14 Maria had gone to the theater, is that  
15 correct?

16 A Yes.

17 Q That was at the 37th Arts Theater?

18 A Yes.

19 Q The name of the show was?

20 A In The Heights.

21 Q Had you ever seen that before?

22 A No.

23 Q That theater has two parts, does it  
24 not?

25 A I don't recall there being two parts.

Aquiler

2 I was in one of them.

3 Q There are a number of theaters along  
4 West 37th Street?

5 A Yes.

6 Q Also some restaurants?

7 A I don't remember restaurants on 37th,  
8 but maybe on Ninth Avenue.

9 Q Had you ever been to that theater  
10 before?

11 A No.

12 Q Had you ever been at that intersection  
13 before, Ninth Avenue and 37th Street?

14 A I may have been in passing.

15 Q When you say in passing, you mean like  
16 in a bus or in a cab?

## 17 A Walking to and from.

18 Q Prior to that night, do you have any  
19 specific recollection of ever having been at  
20 that intersection?

21 A Vaquely.

22 Q What would have been the circumstances  
23 for your being there?

24 A Trying to get to the post office, I  
25 believe, on 34th.

Aquiler

2 Q Have you been at that intersection  
3 since the night of this incident?

4 A I believe in passing through either in  
5 a cab, definitely a cab. I've never walked  
6 through afterwards.

7 Q When you were on your way to the post  
8 office, did you walk through it?

9 A I would have walked.

10 Q 37th Arts Theater is virtually at the  
11 corner of Tenth Avenue; is that correct?

12 A Yes.

13 Q It's on the south side of 37th?

14 A Yes

15 0 Did you stay for the encore?

16 A I believe we stayed for -- I remember  
17 applauding some of the performers. I think  
18 we started to pack up and leave as it was  
19 closing out.

20 Q Were other people leaving at the same  
21 time?

22 A Yes

23 Q Were other people leaving from other  
24 theaters at the same time.

25 A I don't remember I just remember the

1 Aquiler

2 group I was walking with coming from that  
3 particular theater.

4 Q When you say group, you, yourself, was  
5 just with Maria, is that right?

6 A Yes.

7 Q Who else was in that group?

8 A Maria and I were walking, but there  
9 were people behind us coming from that  
10 particular theater walking towards Ninth  
11 Avenue on the south side of the street.

12 Q Were there any people walking in front  
13 of you?

14 A There may have been, but I don't  
15 recall. If there were, they were far enough  
16 ahead of us.

17 Q Was it sleet ing?

18 A Yes, wet conditions.

19 0 Did you or Maria have an umbrella?

20 A No.

21 Q Were you walking briskly in view of  
22 the weather?

23 A Yes

24 Q Incidentally, have you spoken with  
25 Maria since her deposition on Tuesday?

1 Aquiler

2 A No.

3 Q Have you spoken with Mr. Kaplen since  
4 Maria's deposition on Tuesday?

5 A Yes.

6 Q When?

7 A Yesterday evening.

8 Q Where?

9 A On the phone.

10 Q For how long?

11 A About not even five minutes.

12 Q What did she say and what did you say?

13 A We confirmed the deposition and I  
14 requested to see the police report.

15 Q Was there any discussion as to what  
16 Maria had testified to?

17 A A little bit.

18 Q What was that?

19 A The crossing of the street, the noise,  
20 the screeching, the screaming, the thud, the  
21 weather conditions.

22 Q What did he say Maria said about the  
23 weather conditions?

24 A That it was also a wet night.

25 Q What did he say that Maria said about

1 Aquiler

2 the snow?

3 A I don't believe he talked about the  
4 snow.

5 Q How about sleet?

6 A Not specifically.

7 Q Just wet?

8 A Just wet.

9 Q What did Maria say about the wet  
10 night?

11 A Not much, just it was a wet night.

12 Q What else did he say about what Maria  
13 testified to?

14 A That's about it.

15 Q Did he tell you what Maria testified  
16 to about the Phillips vehicle?

17 A No.

18 0 No mention at all about that?

19 A No.

20 Q In terms of the speed, what did she  
21 say about the speed?

22 A It was going fast

23 0 Did he quantify what he meant by fast?

24 A About 40 miles per hour

25 0 What else was said?

Aquiler

2 A That's all I recall.

3 Q Anything about the crosswalk?

4 A Just the motions, the motions of  
5 crossing, the motions of cross-walking,  
6 looking back.

7 Q Other than the one phone call sometime  
8 two months ago and the phone call last night,  
9 have you ever spoken with Mr. Kaplen?

10 A Before this deposition, this morning,  
11 we met.

12 Q Where this morning?

13 A In the room down the hall.

14 Q For how long was that meeting?

15 A Fifteen minutes.

16 Q Did Mr. Kaplen show you the police  
17 report?

18 A Yes.

19 Q Did he show you anything else?

20 A The photographs.

21 Q What, if anything, did he say about  
22 the photographs?

23 A He mentioned what Michael Phillips had  
24 told him about where his vehicle was

25 0 What did he say?

Aquiler

2 A There was an "X" on the photograph

3 Q Did he show you any photographs that  
4 were marked at Maria's deposition?

5 A Not that I know of.

6 Q Which police report did he show you?

7 A Clarify that police report. I'm only  
8 aware of one police report.

9 Q Was it the police report that had the  
10 writing of what you had said?

11 A It was handwritten.

12 Q And what you said and what Maria said  
13 a handwritten report.

14 A Yes.

15 Q Was that the only report that you saw?

16 A Yes.

17 Q Was there anything about what you saw  
18 there, whether you, whether Maria said or you  
19 said that you corrected?

20 A No.

21 Q Did that accurately reflect what you  
22 had said to the police?

23 A Yes.

24 Q Was that statement given at the scene  
25 or was that by phone sometime later?

Aquiler

2 A At the scene. We were actually  
3 leaving on our way onto the train and halfway  
4 there, we got a phone call on my cell phone  
5 to return and give the report at the scene.  
6 This was about an hour and a half after  
7 because Maria decided to stick around just in  
8 case.

9 Q Do you have any nursing background?

10 A No.

11 Q Does Maria?

12 A No.

13 Q As you were walking, I believe you  
14 said you were walking briskly down 37th  
15 Street toward Ninth?

16 A Yes.

17 Q And I believe you said there were  
18 people behind you, but you don't recall  
19 anybody in front of you?

20 A Yes.

21 Q How far behind you were the people  
22 walking?

23 A Five to eight feet. Before the  
24 intersection, at the intersection, we  
25 congregate.

Aquiler

2 Q As you were walking with Maria, were  
3 there other people walking in your immediate  
4 area?

5 A Not my immediate area, just trickling  
6 out.

7 Q Were they walking behind? Could you  
8 tell how many people there were?

9 A Two to five. It was hard to say who  
10 was with whom because the theater had just  
11 ended.

12 Q In view of the weather, everyone would  
13 have been walking briskly?

14 A I believe so.

15 Q Did anybody behind you have an  
16 umbrella?

17 A I don't recall.

18 Q These two to five people behind you,  
19 were they male and female?

20 A Yes, mixed.

21 Q Were they young people, yourself and  
22 Maria's age?

23 A Yes.

24 Q Was In The Heights the type of play  
25 that would attract young people?

Aquiler

2 A Yes.

3 Q Was that, in fact, mainly young people  
4 at the theater?

5 A It was a good mix, but I believe  
6 mostly young people.

7 Q While you were at the theater, did  
8 you ever see the young lady involved in the  
9 accident?

10 A Not that I can recall

11 Q Did you ever see her before you were  
12 at the theater?

13 A Not that I recall

14 Q Did you see her walking along 37th  
15 Street?

16 A Behind us yes

17 O How was it you noticed her?

18 A She was walking with her friend who is  
19 significantly taller than she was and it  
20 looked like they were on a date. And they  
21 were only a few feet behind me and at the  
22 intersection. They were huddled around.

23 Q Were they also walking briskly?

24 A It seemed like they may have been

25 Maria and I had a head start

Aguilar

2 Q Were there other people with them?

3 You said there were two to five people, were  
4 there other people in that group?

5 A At that point, people disbursed and  
6 two, and Maria and I, and two Sabina and her  
7 friend, and upon crossing the street, that's  
8 all I remember.

9 Q How was it in the course of walking  
10 along 37th Street, you took notice of  
11 somebody behind you since it was sleetting and  
12 you were walking briskly?

13 A I remember noticing this.

14 Q Did you look behind at them?

15 A I believe so, just walking and looking  
16 back.

17 Q Was there any particular reason why  
18 with the sleet --

19 A Commotion and leaving the theater and  
20 the light.

21 Q Along 37th Street now before you got  
22 to the intersection?

23 A Yes, between the theater and the  
24 intersection

25 Q You did have occasion to look back?

1 Aquiler

2 A I might have glanced.

3 Q What was the young lady wearing?

4 A I remember her boots.

5 Q What do you remember about her boots?

6 A They looked like Uggs, very thick. I  
7 believe they were brown. I believe she was  
8 wearing a long dark coat.

9 Q What was her escort wearing?

10 A Also wearing a long coat.

11 Q Dark?

12 A Dark.

13 Q Was either of them carrying anything?

14 A I don't remember.

15 Q Was either of them utilizing an  
16 umbrella?

17 A I can't remember if they were  
18 utilizing one or just holding one. I want to  
19 say that there was one.

20 Q Did you notice anyone else in this  
21 group that was leaving the theater besides  
22 those two?

23 A Just random people going out.

24 Q You had never seen and did not know  
25 either Ms. Parady or her escort before that;

1 Aquiler

2 is that correct?

3 A Correct.

4 Q So they would have been random people?

5 A Right.

6 Q How about the other random people,  
7 what did you notice about them?

8 A They were just exiting the theater and  
9 trying to get to the intersection, coats,  
10 umbrellas, Ms. Parady and her friend happen  
11 to be the closest to us and I noticed they  
12 must be on a date

13 Q What made you think they must have  
14 been on a date?

15 A They were talking to each other and  
16 walking together.

17 Q Where they in contact with each other  
18 in terms of holding hands or anything of that  
19 sort?

20 A No.

21 0 Were they walking abreast?

22 A Yes, yes, they were chatting.

23 0 : Was the sidewalk slushy and sloshy?

24 A Yes. Yes, or the curb where it's  
25 pushed up.

1 Aquiler

2 Q I'm speaking about walking along 37th?

3 A Yes, sir.

4 Q Was that all slush and sleet?

5 A Yes, some places, there were pockets  
6 of wet cement.

7 Q Was the sidewalk condition such that  
8 you would look at it and walk carefully on  
9 the snow and sleet?

10 A Yes, definitely.

11 Q You would tend to look down at the  
12 sidewalk?

13 A Yes.

14 Q When you glanced back and saw this  
15 couple, which side in terms of the curb and  
16 the building was the gentleman?

17 A Closer to the building?

18 Q In terms of the width of the sidewalk  
19 going from the curb of 37th Street to the  
20 building line, where were they?

21 A In the middle.

22 Q Where were you?

23 A In the middle.

24 Q With regard to Maria and you, who was  
25 on the outside, the curb side?

1 Aquiler

2 A Maria was on the outside.

3 Q Is that the way it continued as you  
4 crossed over Ninth Avenue?

5 A Yes.

6 Q Did there come a time when this group  
7 behind you caught up with you?

8 A No.

9 Q As you walked along, eventually you  
10 came to the southwest corner of Ninth and  
11 37th?

12 A From the sidewalk from the theater.

13 Q The corner?

14 A Yes.

15 Q Do you drive a car?

16 A When I'm in San Diego. San Diego is  
17 where I lived in California.

18 Q I assume you're licensed?

19 A Yes.

20 Q Do you have a car in New York?

21 A No.

22 Q Other than the visits to San Diego, do  
23 you drive a car at all?

24 A No.

25 Q Have you ever driven a car in New

1 Aquilera

2 York?

3 A One time as a designated driver  
4 situation. That was enough.

5 Q Would it be fair to say you've never  
6 driven at 37th and Ninth?

7 A Yes.

8 Q Would it be fair to say you've never  
9 driven, (comma) through the Lincoln Tunnel?

10 A I have driven through the Lincoln  
11 Tunnel.

12 Q Did you enter the Lincoln Tunnel just  
13 before 37th Street and Ninth Avenue?

14 A I have no recollection where I  
15 entered. I just had to get my drunken friend  
16 home.

17 Q And he unfortunately lived in New  
18 Jersey?

19 A Yes.

20 Q That was the one time that you drove  
21 in New York?

22 A Yes.

23 Q When was that?

24 A Between 2003 and 2004

25 0 Was it in the snow or sleet?

1 Aquiler

2 A No.

3 Q When you arrived at the corner of  
4 Ninth Avenue and 37th Street, were you the  
5 first ones to arrive there, you and Maria?

6 A We had the lead.

7 Q When you arrived there, what was the  
8 signal from the pedestrian side crossing  
9 Ninth Avenue?

10 A It was the hand, the red hand at that  
11 point, so we waited?

12 Q How long did you wait?

13 A 30 seconds to a minute, I would say

14 Q During that time, what was the  
15 condition of traffic going south on Ninth  
16 Avenue.

17 A At the time we saw the red hand?

18 0 Yes.

19 A There were cars going southbound on  
20 Ninth Avenue.

21 Q Would you describe it as heavy, light,  
22 medium?

23 A Medium to heavy because of such  
24 weather conditions, it seemed at that time of  
25 night.

1 Aquiler

2 Q At that time, what were the weather  
3 conditions?

4 A Wet.

5 Q Sleet?

6 A Yes, slushy, wet.

7 Q Falling sleet?

8 A I remember the water in my face, yes.

9 Q Did you have any kind of protection  
10 over your face?

11 A I had my hat.

12 Q Maria, the same?

13 A I believe so.

14 Q Did you have any kind of waterproof  
15 boots?

16 A I definitely had boots on.

17 Q Rubber soles?

18 A Rubber soles, that night they were  
19 waterproof.

20 Q Did Maria have the same?

21 A She had boots as well. I'm not sure  
22 about the sole. I remember them being black  
23 and I'm pretty sure they were waterproof.

24 Q Were you carrying anything?

25 A I believe I had a purse.

Aquiler

2 Q How about Maria?

3 A I believe she had a purse as we well.

4 Q Was either one of you utilizing an  
5 Ipod?

6 A I don't own one. She owns one, but  
7 she was not using it at the time. We were  
8 chatting though.

9 Q Was either one of you utilizing her  
10 cell phone?

11 A No.

12 Q As you waited that 30 seconds to one  
13 minute, did other people come to the corner?

14 A Yes, there was quite a group. I would  
15 say about five people, five to seven maybe.  
16 And we were leading that group.

17 Q Was anybody crossing 37th Street at  
18 that point going either south or north in the  
19 intersection to your left along 37th Street,  
20 crossing 37th Street along Ninth Avenue,  
21 north or south?

22 A I can't remember. I was very focused  
23 when it's going to turn green.

24 Q Was anyone crossing on the other side  
25 of Ninth Avenue from north to south across

1 Aquiler

2 37th Street?

3 A I don't remember passing anyone.

4 Q On the other side?

5 A I don't remember.

6 Q Was anyone walking across Ninth Avenue  
7 on the north side of the intersection as you  
8 were waiting there?

9 A I couldn't tell you.

10 Q Was anyone waiting to cross, to come  
11 westward on the same side of the intersection  
12 where you were, waiting to come towards you?

13 A I can't recall.

14 Q As you crossed, did anyone cross the  
15 other way?

16 A I can't recall either.

17 Q With five or seven people there, did  
18 the signal turn to walk?

19 A Yes.

20 Q Did you walk?

21 A Yes.

22 Q Briskly?

23 A Yes.

24 Q At the intersection, there is a  
25 traffic pole at that corner. Do you recall

1 Aquiler

2 if you were on the left or right side of that  
3 traffic pole?

4 A I want to say the right side of it

5 Q Where were the other people?

6 A In the area behind us on the side of  
7 us.

8 Q Where was Ms. Parady and her escort at  
9 that time?

10 A They were right besides us, to the  
11 right.

12 Q When you started to cross, were you in  
13 the lead, so to speak?

14 A Yes.

15 Q And the other five to seven people  
16 followed?

17 A Yes.

18 Q Where were these five to seven people?

19 Where would Ms. Parady and her escort have  
20 been?

21 A Right behind us.

## 22 Q How far?

23 A Five to eight feet. By the time we  
24 had crossed the middle part of the  
25 intersection, I want to say they were five

1 Aquiler

2 eight feet behind us, not too far.

3 Q Where were the other people --

4 A Straggling behind, five to eight feet.

5 Q Were you and Maria talking during that  
6 time?

7 A We were chatting.

8 Q Were any cars proceeding west on 37th  
9 Street as you were crossing?

10 A South west there was a car -- there  
11 were cars going west and there were cars  
12 turning to go south.

13 Q The cars going west, how many cars  
14 were there going west as you were crossing?

15 A One or two.

16 Q At what speed would they have been  
17 going?

18 A 30 to 40.

19 Q As you were standing on the corner 30  
20 seconds to a minute, were there cars stopped  
21 for the red light on 37th Street facing west?

22 A Yes.

23 Q How many cars were there?

24 A I saw maybe two sets of headlights at  
25 the front and then I can't tell you how many

1 Aquiler

2 were behind those cars. There seemed to be a  
3 string of cars.

4 Q Did any of the vehicles turn left onto  
5 Ninth Avenue?

6 A Yes.

7 Q How many?

8 A One, only made it halfway.

9 Q How many turned?

10 A I don't remember any other vehicles  
11 turning except for the one that was involved.

12 Q Had that vehicle been stopped at the  
13 intersection for the red light?

14 A I want to say no because of the speed  
15 at which the vehicle was moving.

16 Q At which this vehicle had been moving,  
17 how many vehicles had already passed you  
18 going west?

19 A About two.

20 Q Had any other cars made any turn to go  
21 south on Ninth?

22 A I don't recall any other cars going  
23 south.

24 Q Where were all these cars that were in  
25 this string that you mentioned stopped for

1 Aquiler

2 the red light?

3 MR. KAPLEN: That question does  
4 not make sense.

5 Q Do you understand the question?

6 A I think so. I believe waiting to  
7 cross, waiting to cross westbound

8 Q They were still waiting after the  
9 light turned green.

10 A They were in line to cross

11 Q Where did the Phillips vehicle going  
12 30 or 40 miles per hour come from

13                           MR. KAPLEN: She didn't say the  
14                           Phillips vehicle was going 30 to 40  
15                           miles an hour. I object to that  
16                           statement.

17 Q You may answer.

18 A It was coming from 37th Street

19 Q When it was coming at 30 or 40 miles  
20 per hour on 37th Street --

21 MR. KAPLEN: Objection.

22 Q Where were these other cars of the  
23 string of cars stopped?

24 A In the area -- my attention was  
25 focused on this vehicle completely so

1 Aquiler

2 on this vehicle.

3 Q When you first saw this vehicle, where  
4 was it?

5 A It was on 37th Street.

6 MR. KAPLEN: This vehicle  
7 meaning the Phillips vehicle?

8 MR. BUTLER: Yes.

9 Q Did you understand that to be my  
10 question?

11 A It was on 37th Street headed for the  
12 intersection.

13 Q Where on 37th?

14 A Right at the corner of Ninth Avenue  
15 and 37th right before the crosswalk.

16 Q Before the crosswalk on 37th Street?

17 A Yes.

18 Q At that time, what speed was it going?

19 A It was going 35 to 40 miles an hour.

20 Q At that time, where were the other  
21 vehicles that had been in this string of  
22 vehicles that you described?

23 A Several passed and several were behind  
24 this vehicle trying to squeeze.

25 Q Squeeze what?

1 Aquiler

2 A Seams like some vehicle were headed  
3 west and some were waiting for that turn to  
4 go south, just waiting in line.

5 Q How many were waiting to go south?

6 A I can't recall. I only noticed the  
7 vehicle because of the speed, it was  
8 dangerously close to where Maria -- the first  
9 thing crossed my mind is another crazy driver  
0 to make this turn.

11 Q Did you see him from the time he was  
12 at the intersection of 37th Street until he  
13 actually was making the turn and the accident  
14 happened; is that correct?

15 A Yes.

16 Q Was he clearly visible as he came  
17 across?

18 A Yes

19 O His lights were on?

20 A Yes Dangerous, slow

21 0 But you could see them all round.

22    A       Yes, I could say that, but I

<sup>23</sup> See *U.S. v. Ladd*, 100 F.2d 100, 103 (1st Cir. 1938), *cert. denied*, 300 U.S. 630 (1938).

24      61      100      100

... as described at the

1 Aquiler

2 A I want to say halfway through the  
3 intersection to three-fourths of the way,  
4 maybe more than halfway, a little more than a  
5 halfway mark, maybe.

6 Q Where were you when he came close to  
7 you as you've described, where in terms of  
8 the crossing of Ninth Avenue were you?

9 A I want to say between the halfway and  
10 three-fourths mark.

11 Q At that time, were people from these  
12 other people, five to seven people or other  
13 people behind?

14 A It seemed they were behind.

15 Q Male and female?

16 A Male and female. As to the other  
17 people in the group, I don't have a  
18 recollection as to where they were. They  
19 were definitely male and female.

20 Q And the other group that you described  
21 were also male and female?

22 A It was mixed.

23 Q At any time, did you ever speak with  
24 Ms. Parady?

25 A No.

Aquiler

2 Q At any time, did you ever speak with  
3 Mr. Blank, her escort?

4 A No.

5 Q Did you actually see what happened in  
6 terms of this accident?

7 A Visually, no. Auditorially yes.

8 Q Did you have any difficulty crossing  
9 Ninth Avenue in terms of any depression in  
0 the roadway?

11 A I don't recall any difficulty  
12 crossing. We crossed.

13 Q Do you know where Ms. Parady was with  
14 relation to any depression in the roadway  
15 when she was lying there?

16 A I want to say there was a circular --  
17 I don't know what they're called --

## 18 O A manhole.

19 A I don't mean that. Like potholes.

20 Q An actual rectangular depression in  
21 the sidewalk in the crosswalk?

22 A I don't recall.

23 O You don't know where she was --

24 A What period?

25 Q When you saw her on the ground?

1 Aquilera

2 A I don't recall a depression

3 Q Was the first time that you saw her,  
4 she was on the ground already?

5 A Yes.

6 Q Lying as you've described?

7 A Immediately after the sounds and the  
8 noise.

9 Q You said that you heard a screech of  
10 brakes; is that correct?

11 A Yes.

12 Q Did any vehicle proceed while its  
13 brakes were screeching? Do you know what  
14 vehicle screeched the brakes?

15 A It was the truck

16 Q How do you know that?

17 A Because the vicinity of the truck and  
18 the noise they marched

19 0 But there were other vehicles. 1 -

20 A Yes, when we looked back at the  
21 position of the truck, it proved it was the  
22 vehicle that made the sound.

23 Q For how long was this approach?

24 A Three to five seconds

25 0 And the vehicle was stopped when

Aquiler

2 saw it?

3 A Yes.

4 Q So it would have stopped from going  
5 from 35 to 40 miles an hour to being stopped  
6 when you saw it?

7 A Yes.

8 Q As I understand, you then proceeded to  
9 the far curb or the southeast curb of Ninth  
10 Avenue and 37th Street; is that correct?

11 A Yes.

12 Q And you stayed there?

13 A Yes.

14 Q You never went any closer to the scene  
15 of the accident?

16 A No.

17 Q For how long did you stay there on  
18 that corner?

19 A few minutes until I believe Maria  
20 took out her phone and tried to call, but it  
21 seemed --

22 O Called 911?

23 A And it seemed like everybody around  
24 utilized their cell phones including Ms.

25 Parady's escort who had his cell phone cut as

1 Aquiler

2 well.

3 Q Who is the first one that came there,  
4 the cops?

5 A NYPD van.

6 Q How long was that?

7 A Couple of minutes, maybe less, because  
8 they had the whole intersection blocked off  
9 in a matter of minutes.

10 Q Did they put up the yellow tape?

11 A Yes.

12 Q Did they put that up right away?

13 A Yes.

14 Q Did you ever speak with either Ms.

15 Parady or anybody from her family after this  
16 accident?

17 A No, I had no idea what happened.

18 Q Did you ever speak to Mr. Blank?

19 A No.

20 Q As I understand, after a few minutes  
21 on the corner, you then left?

22 A Yes.

23 0 Going towards the train?

24 A Towards the train eastbound and then  
25 we got the phone call

1 Aquiler

2 Q That was from the police?

3 A Yes.

4 Q You then returned to the scene?

5 A Returned to the scene and waited a  
6 long time before we were questioned.

7 Q You said you waited a few minutes at  
8 the corner, then you started walking?

9 A Right.

10 Q How long after you left the  
11 intersection that you got the call?

12 A A minute or two.

13 Q Do you recall what police officer it  
14 was?

15 A I don't remember his name.

16 Q You said you waited a long time. Had  
17 Ms. Parady been taken to the hospital at that  
18 point?

19 A Yes.

20 Q Did you make any observations at that  
21 time about anything with regard to this  
22 accident?

23 A The yellow tape was still up. The man  
24 driving the vehicle was now out of his  
25 vehicle at the same intersection where we

1 Aquiler

2 were waiting to cross, the southwest corner  
3 and I remember he was on his phone, very  
4 distressed, almost in shock.

5 Q Was Mr. Blank still there?

6 A No, I believe he went in the ambulance  
7 with Ms. Parady.

8 Q Was there a nurse there?

9 A Not that I recall.

10 Q Did you speak to anyone other than  
11 police officers then?

12 A Maria. This is while we're waiting?

13 Q Yes.

14 A Yes, Maria.

15 MR. BUTLER: Nothing further.

16 Thank you.

17 EXAMINATION BY

18 MR. KAPLEN:

19 Q While you were crossing the street,  
20 did you hear anybody scream?

21 A Yes.

22 Q Did you hear that scream before or  
23 after you saw the vehicle operated by Michael  
24 Phillips?

25 A I heard the scream after I saw the

1 Aquiler

2 vehicle.

3 Q Was that scream from in front of you  
4 or behind?

5 A Behind me.

6 Q Was that a male or female voice?

7 A Female.

8 Q Could you describe that scream for us?

9 A It was a loud scream. Almost blended  
10 in with the screeching of the tires.

11 Q Do you know what came first, the  
12 scream or the screeching of the tires as  
13 you've described?

14 A I want to say after.

15 Q After you heard this screeching of the  
16 tires, what was the next thing you heard?

17 A A loud thud.

18 Q Did that screech that you heard --  
19 where was the vicinity of that scream?

20 A Right behind me.

21 Q Where did it come from?

22 A Maybe to the left.

23 Q Were you able to ascertain who was  
24 making that sound?

25 A Ms. Parady.

Aguilar

2 MR. KAPLEN: No further  
3 questions

**4** CONTINUED EXAMINATION

5 BY MR. BUTLER:

6 Q Had you ever heard Ms. Parady scream  
7 before?

8 A No.

9 Q . . . . Had you ever heard any of the women  
10 behind you scream before?

11 A No.

12 Q Did you see anyone, see anyone, as  
13 they were screaming?

14 A No.

15 (Time noted: 12:30 p.m.)

16

17

18

19

SHARLENE AQUILER

20 Subscribed and Sworn to before me  
21 this day of 2008

22

23

Notary Public

24

25

46

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I, JUSTYNE HAISONAK, hereby certify that

the Deposition of SHARLENE AQUILER was held before  
me on the 20th day of December, 2007; that said  
witness was duly sworn before the commencement of  
his testimony; that the testimony was taken  
stenographically by myself and then transcribed by  
myself; that the party was represented by counsel  
as appears herein;

That the within transcript is a true  
record of the Deposition of said witness;

That I am not connected by blood or  
marriage with any of the parties; that I am not  
interested directly or indirectly in the outcome  
of this matter; that I am not in the employ of any  
of the counsel.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 8<sup>th</sup> day of January, 2008.

*Justyne Haisonak*

JUSTYNE HAISONAK

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ERRATA SHEET

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